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March 17, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C.

RE: Ex parte letter in Amendment of Parts 32 and 64 of the Commission's
Rules to Account Transactions between Carriers and Their Nonregulated
Affiliates. Notice of Proposed Rulemaking released October 20, 1993;
CC Docket No. 93-251.

Dear Mr. Caton:

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Recently, the Commission issued a series of Orders to Show Cause to the Regional Bell Operating Companies (RBOCs) regarding audits of the Common Line revenue pool that the Commission had ordered the National Exchange Carrier Association to undertake. Orders to Show Cause, AAD 93-146 through 93-153, March 3, 1995. These apparent violations occurred mainly in 1988 -- six years ago -- and cost interstate ratepayers at least \$73.5 million dollars. The total does not include effects of shifts between Common Line and other categories, nor does it include the ratepayer costs of some 19 violations for which the outside auditors were unable to place a value. [See the table attached to this letter.]

The International Communications Association (ICA) believes that these delayed findings underscore the importance of the Commission's acting promptly on important reforms to its Part 64 joint cost rules. The Commission proposed a series of reforms for rules governing transactions between regulated carriers and non-regulated affiliates. ICA vigorously supported in the proceeding above referenced, the proposed changes, which have now been pending for some 16 months since the conclusion of the pleading cycle.

The Notice proposes to (a) limit prevailing company prices as a valuation method to circumstances where nonregulated entity sells at least 75% of its output to non-affiliates; (b) apply the book cost versus fair market value "ratchet" to service transfers as well as asset transfers; (c) clarify auditing and reporting requirements affecting affiliate transactions; and (d) simplify the process for calculating the costs of affiliate transfers. Many parts of the Notice reiterate the Commission's tentative conclusions that these reforms are necessary and important, based upon its

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several years experience under the existing rules. See Notice, at paras 9-11, 24, 28, 32, 39, 48-49, 107-108.

The recently-issued Orders to Show Cause confirm that a number of major carriers have had problems conforming their accounting and tariff support material and practices to already established Commission rules. In the case of transfers between regulated and nonregulated affiliates, the dominant carriers' have stronger incentives to mis-apply accounting rules. While the nonregulated affiliates typically operate in competitive markets, the regulated operations of the carriers remain largely de facto monopolies at the state and interstate levels. These monopoly operations are so much larger in revenue volume than potentially competitive services that cost shifting is extraordinarily difficult to detect.

Cost shifting of the magnitude apparently detected in the Common Line audits could, if it occurred drastically impair the financial viability of a competitive service, particularly where competition is emerging. The fact that the Commission is only now able to issue the Orders to Show Cause some six years after the alleged violations occurred, simply underscores this point.

In the case of the NECA Common Line audit, there already were appropriate Commission rules in place. In the case of the affiliate transactions accounting reforms, on the other hand, adequate enforcement of carrier cost shifting incentives cannot even begin unless or until the rules reforms are adopted.

The need for the Part 64 Rules reforms in CC Docket No. 93-215, as well as the recent Orders to Show Cause, also underscore ICA's belief that the Commission needs to revisit its prior conclusions that the costs of structural separation outweigh its benefits -- particularly with respect to RBOC services that do not exhibit clear and demonstrable economies of integration with regulated services and assets. Previous cost and benefit analyses have not considered costs incurred for audits that may be required many years after the event, nor have they adequately considered the costs to the public if competition is stifled by carrier cost shifting. Most importantly, given Congress' clearly stated intention to reduce the Commission's budget, it is incumbent upon the Commission to implement a form of LEC regulation that makes more efficient use of Commission resources. ICA continues to believe that appropriate structural separation requirements can better protect the ratepaying public and the Commission's pro-competition goals, without unduly affecting either the RBOCs' ability to compete fairly or the public benefits of allowing them this opportunity.

Accordingly, ICA believes that CC Docket No. 93-251 should be moved to the top of the Commission's agenda at this time.

Respectfully submitted,

International Communications Association

By: 

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Its Attorney

cc: Kathleen Wallman, Chief, Common Carrier Bureau
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Kent R. Nilsson, Chief, Cost Analysis Branch
National Association of Regulatory Utility Commissioners
NARUC Communications Committee staff members
National Association of State Utility Consumer Advocates

TABLE

Orders to Show Cause, concerning the 1988-89 audit of carrier
reported adjustments to the NECA common line revenue pool

AAD	LEC	Number of violations		Net Total * Impact
93-146	Ameritech	21	6 unknown	\$13,451
93-147	Bell Atlantic	8	1 unknown	21,869
93-148	BellSouth	6	1 unknown	5,523
93-149	NYNEX	17	1 unknown	19,753
93-150	Pacific Bell	6	1 unknown	2,034
93-151	SW Bell	15	5 unknown	5,968
93-152	US West	27	4 unknown	4,901
Total Net* Impact on Ratepayers				\$73,499